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No. 00-1577

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2000

BURL CAIN, Warden
Angola State Prison,

Petitioner,

-vs-

WILBERT RIDEAU,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION

On Petition for Writ of Certiorari
to the United States Court of Appeals for the Fifth Circuit

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QUESTION PRESENTED

Whether the Court should retire the 120-year rule requiring reversal of a conviction upon a showing that purposeful racial discrimination tainted the grand jury process, most recently reaffirmed in *Vasquez v. Hillary*, 474 U. S. 254 (1986), in a case where racial bias plainly tainted Respondent's indictment, where the state suffered no prejudice in its resolution years later, and where the prosecution has announced it has ample evidence to reconvict Respondent?

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NOW COMES Wilbert Rideau, Respondent, and files this Brief in Opposition.

STATEMENT OF THE CASE

Warden Cain has set forth the procedural history of this case, and replicated the statement of facts from the first direct appeal decision of the Louisiana Supreme Court in the Petition for Writ of Certiorari.

REASONS FOR DENYING THE WRIT

In a careful and comprehensive decision, a unanimous panel of the United States Court of Appeals for the Fifth Circuit determined that application of long settled principles concerning racial discrimination in the grand jury process to the facts of this case showed purposeful discrimination and a straightforward violation of the Equal Protection Clause of

the Fourteenth Amendment, and that application of similarly settled habeas jurisprudence required a finding that Respondent's 21-year delay in filing the petition did not prejudice the state in any manner in responding to the claim. *Rideau v. Whitley*, 237 F.3d 472 (5th Cir. 2000). The panel awarded relief.

In his Petition for Writ of Certiorari, Warden Cain poses three questions that go only to the first issue. Several reasons compel the conclusion that the Warden's petition should be denied.

1. **The Court Recently Settled This Question, and No Intervening Events Warrant Reconsideration**

For the past 120 years, the Court has held repeatedly that the remedy for a showing of purposeful racial discrimination in the Grand Jury Process is reversal of the conviction absent a showing of prejudice. Throughout, the Court has identified a number of important interests that justify the rule. Recently, the Court recalled that "the accused suffers a significant injury in fact when the composition of the grand jury is tainted by racial discrimination. '[D]iscrimination on the basis of race in the selection of members of the grand jury . . . strikes at the fundamental values of our judicial system' because the grand jury is a central component of the criminal justice process. *Campbell v. Louisiana*, 140 L.Ed.2d 551, 559 (1998) *quoting Rose v. Mitchell*, 443 U.S. 545, 556 (1979). This is because the grand jury "controls not only the initial decision to indict, but also significant decisions such as how many counts to charge and whether to charge a greater or lesser offense,

including the important decision to charge a capital crime." *Id.* "The integrity of these decisions depends on the integrity of the process used to select the grand jurors. If that process is infected by racial discrimination, doubt is cast over the fairness of all subsequent decisions." *Id*

In *Vasquez v. Hillary*, 474 U.S. 254 (1986), the Court agreed to determine whether the no harmless error rule that the Court had followed since 1880 should be modified to allow for a harmless error determination, at least in circumstances where "the evidence against [the defendant] was overwhelming and [where] discrimination no longer infects the selection of [the] grand jur[y]." 474 U.S. at 260.[1] In unequivocal terms, the Court reaffirmed that racial discrimination in the grand jury process constitutes reversible error regardless of the strength of the state's case and whether the jurisdiction has ceased to engage is purposeful discrimination. It determined that "intentional discrimination in the selection of grand jurors is a grave constitutional trespass, possible only under color of state authority, and wholly within the power of the State to prevent." *Id.*, at 262. It concluded that the automatic reversal rule was the "only effective remedy for this violation" and was not "disproportionate" given "the evil that it seeks to deter." *Id.* It further determined that while racial discrimination in the criminal justice systems has lessened, it "still remain[ed] a fact of life . . ." *Id.*, at 264. The Court noted also that as well-established principles of stare

[1] Warden Cain seeks the same rule and characterizes the evidence against Mr. Rideau as overwhelming and racial discrimination in the grand jury in Calcasieu Parish as a thing of the past. As we demonstrate below, neither contention is accurate.

decisis impose a heavy burden on those seeking the overruling of precedent, "[i]n the case of grand jury discrimination, we have been offered no reason to believe that any such metamorphosis has rendered the Court's long commitment to a rule of reversal out-dated, ill-founded, unworkable, or otherwise legitimately vulnerable to serious reconsideration. On the contrary, the need for such a rule is as compelling today as it was at its inception." *Id.*

Finally, the Court rejected modifying the rule in cases where the government can demonstrate that delay in the filing of the habeas corpus petition has rendered its ability to obtain another conviction unlikely. The Court noted that Congress had expressly rejected adopting such a rule, and thus, the Court should not lightly adopt one on its own. *See id.*, at 265.

As was the case in *Vasquez*, Warden Cain presents absolutely no evidence that the 120 year old rule is "out-dated, ill-founded, unworkable, or otherwise legitimately vulnerable to serious reconsideration." Indeed, recent developments show that the Court's attention to this matter is wholly unwarranted.

a. **Grand Jury Discrimination Remains a Serious Problem**

Warden Cain asserts broadly that racial discrimination in the Grand Jury process "has been rectified," Pet. at 10, and "[t]he systematic flaw and wrongs of the past have been long ago addressed and rectified." *Id.*, at 13. This is certainly not the case in Louisiana and in Calcasieu Parish.

Just two terms ago, the Court reviewed a case in which a strong case of purposeful discrimination in the grand jury process was advanced. *Campbell v. Louisiana, supra*. The evidence in that case showed that "between January 1976 and August, 1993, no black person served as a grand jury foreperson in [Evangeline] Parish, even though more than 20 percent of the registered voters were black persons." 140 L. Ed.2d at 557. In *Murphy v. Warden*, No. 98-0729-P (W.D.La. Order of August 20, 2000), the court reversed the conviction after it was established that during the 26-year period of 1965 through 1991, only 2 of 53 foremen were black in [Bienville] Parish where African Americans account for 40% to 45% of the population. In *Hicks v. Cain*, No. 97-2460 (W.D.La. Order of Sept. 29, 2000), the court granted relief after determining that all of the grand jury foremen from 1965 to 1991 were white. And in *State of Louisiana v. Ricky Langley*, No. 3057-92 (Calcasieu Parish) and No. 3-94-968 East Baton Rouge Parish)(Order entered March, 2001), a state judge overturned Langley's conviction after finding that from 1972 until 1994, 40 of the 43 grand jury forepersons in Calcasieu Parish were white.[2] These, and other pending cases,[3] show that purposeful racial discrimination in the Grand Jury process is far from being "addressed and rectified." Indeed, they establish that the rectification process continues at present.

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[2] This case originates from Calcasieu Parish.

[3] *See e.g., Bosley v. Cain, Warden,* No. CV00-0827-M (W.D.La)(evidence before Court shows that in Ouchita Parish, no black served as grand jury foreperson during 25 year period).

Thus, Warden Cain cannot establish that racial discrimination in the grand jury process is a thing of the past.

b. The Three Prior Convictions, Each The Product of Unconstitutional Practices Affecting the Jury, Do Not Establish That Evidence of Guilt is Overwhelming

Repeatedly, the Warden asserts that the evidence showing Mr. Rideau's guilt of intentional murder is overwhelming, and that this is irrefutable because three trial juries have convicted him. The Warden neglects to mention important factors that demonstrate this assertion proves too much.

It is true that Mr. Rideau has been convicted in three prior proceedings. In each, however, the jury selected to determine his guilt was drawn from an unconstitutional process. Each of his juries was all-white and all-male. This Court struck down this system that excluded women in *Taylor v. Louisiana*, 419 U. S. 522 (1975).

Additional error marred his first and second trials. This Court reviewed his first conviction, and concluded that the failure to grant a change of venue was fundamentally unfair. In exceedingly frank terms, the Court characterized that proceeding as "a kangaroo court." *Rideau v. Louisiana*, 373 U.S. 723, 726 (1963). His second conviction was overturned because the prosecution excluded from the jury numerous venirepersons who expressed doubts about the death penalty. *Rideau v. White*, No. 970 (E.D. La. Judgment & Order May 12, 1969).

Moreover, Mr. Rideau, who was indigent at each trial, was represented by counsel who, however dedicated, were civil attorneys who had never before tried a criminal case and who received no funds whatsoever from the court.

c. Amendment to the Habeas Corpus Statute Prohibits Delay in Asserting Such Claims in Habeas Proceedings

New constraints placed upon the federal habeas remedy further show that review of this case is not warranted. In 1996 Congress enacted a one-year statute of limitations for federal habeas corpus cases.[4] *See* 28 U.S.C. 2244(d); *Artuz v. Bennett*, 148 L.Ed.2d 213 (2000). It is now impossible for state or federal prisoners to wait years after the exhaustion of state remedies, or the completion of the federal direct appeal process, to file challenges to their convictions which, if granted, could severely constrain the ability of the government to gain a second conviction. Any constitutional challenge to the conviction or sentence, including claims of purposeful racial discrimination in the grand jury process, must be asserted within that time frame or federal review is no longer available.

Thus, as a general matter, Warden Cain has provided the Court with no justification whatsoever for revisiting *Vasquez*. Indeed, because the problem of racial discrimination in the grand jury process continues, the prior jury guilty verdicts are tainted with constitutional flaws, and prisoners must promptly present such claims if they wish to be heard in post-

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[4] Warden Cain notes correctly that because Mr. Rideau filed this original petition in the district court in July, 1994, that amendments contained in the Antiterrorism and Effective Death Penalty Act of 1996 do not govern this proceeding. Cert. Pet. at 6, nt. 2; *Lindh v. Murphy*, 521 U.S. 320 (1997).

conviction proceedings, the present circumstances overwhelmingly suggest the Court's intervention is unnecessary.

2. This Case is a Particularly Poor Vehicle For Reviewing *Vasquez* Because The Evidence of Racial Discrimination is Compelling, the Warden Could Demonstrate No Prejudice Would Result from its Consideration, and the Prosecution Cannot Show Its Prospects At Retrial are Harmed

At least three additional reasons compel the conclusion that this particular case is an inappropriate vehicle for reconsideration of *Vasquez*, even if the Court was convinced that changing circumstances required its reexamination. The evidence of discrimination is particularly strong and unrebutted; the Warden was unable to show *any* prejudice from its consideration in this proceeding, and the District Attorney has asserted that he has sufficient evidence to reconvict Mr. Rideau if he decides that another trial is necessary.

a. The Record Establishes Without Doubt Mr. Rideau's Entitlement to Relief

Mr. Rideau's grand jury panel was selected at a time when African Americans were excluded in large numbers from jury service in Louisiana and other states. The record establishes the following.

Prior to his second and third trials, Mr. Rideau sought to quash his indictment on the grounds that the Calcasieu Parish jury commission intentionally excluded African American citizens in violation of the Fourteenth Amendment. Evidentiary hearings were held prior to

both trials.[5] At each, the only live witness was Acton Hillebrandt, the clerk of court and ex-officio member of the jury commission. Jury and Census data was also introduced.

The grand jury that eventually indicted Rideau for murder was selected on February 8, 1961. At that time, Mr. Hillebrandt was an ex-officio member of the Calcasieu Parish Jury Commission and had been clerk of the court for 13 years. Hillebrandt described the grand jury selection process as follows: The Calcasieu Parish Jury Commissioners – all white men – selected both the general venire and individual grand jury venires from identification cards that were coded "N" for "Negro" and "W" for "White." RE, Tab.#10, pp. 359-60. The cards were compiled from Calcasieu Parish voter registration lists and supplemented by the commissioners to include names of residents who were known to them but absent from the voting rolls. Id. at 361. The commissioners would then "thumb through the cards and select whoever they saw fit to put in the general venire." Id. at 360. Individual venires of 20 were drawn from the 300-person general venire in the same manner. According to Hillebrandt, "[w]e selected from that list who we wanted out of there." Id. at 375. Asked whether those selected for the grand jury venire were personally known to him, Hillebrandt responded, "As a general rule, yes, sir." Rec.#48131, p.176. Hillebrandt conceded that he never made any effort to become acquainted with African American citizens of Calcasieu Parish who might potentially qualify for grand jury service. Id. at 192-93; RE, Tab#10, pp. 361, 368.

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[5] The first hearing, which took place on November 10, 1964, is found in the record as Rec.#48131. The second hearing, which occurred on December 15, 1969 and January 5, 1970, is found at RE, Tab.#10.

The commissioners were mindful of the race of prospective grand jurors throughout the selection process because of the racial coding on the cards. In Hillebrandt's words, "[y]ou couldn't help but notice it. It's there." RE, Tab.#10, p.375. Moreover, Hillebrandt acknowledged that the commissioners were aware of the constitutional prohibition against excluding grand jurors on account of race and realized that African Americans "had to be on there one way or the other," so consequently, "[e]very time I draw a grand jury panel, I make it a point to put a member of the colored race on that panel." Rec.#48131, pp. 183, 188. Mr. Rideau's grand jury venire was chosen consistent with this testimony: the 20-person venire included one African American, a man named Edward Flood, whom Hillebrandt had known for "probably 20 years" and who had "cleaned up [his] yard once." RE, Tab.#10, pp. 364-65.

Additional evidence showed that in 1960, African Americans made up 25% of Calcasieu Parish's population of citizens of voting age and nearly 17% of its registered voters. Re, Tab.#10, Exh.D-4. The State offered no rebuttal evidence.

The Louisiana Supreme Court twice considered this claim. On Mr. Rideau's appeal from his second conviction, the Court rejected the claim because (1) the grand jury had been selected prior to the crime, and thus "no action of the jury officials could have been designed to prejudice the defendant." *Rideau v. State,* 193 So.2d 266, 268 (La. 1966)(herein *Rideau II*), and (2) because Rideau had "failed to establish discrimination." Id. On the third appeal, it again rejected this claim but over a strong dissent. The majority embraced its earlier findings, and added, "we have studied this bill and find that defendant has not shown that he

suffered any prejudice . . . ." *Rideau v. State*, 278 So.2d 100, 104 (La. 1973)(herein *Rideau III*).

Justice Barham dissented. He wrote that by requiring a defendant to show prejudice, "the majority applied incorrect standards." Id., at 107. After canvassing all the record evidence, he concluded "[i]t cannot be seriously contended that this defendant failed to make out a prima facie case of purposeful racial discrimination in the selection of the grand jury venire. He established that only 5 per cent of the grand jury venire was black, while the population of Calcasieu Parish 21 year or older was 25 per cent black. That grand jury was selected, not at random but with the commissioners' full knowledge of the race of each person selected." *Id.*, at 107-08.

In the district court, Mr. Rideau pleaded his meritorious Equal Protection claim, but the Warden argued that Rideau's delay in filing disentitled him to relief. Both to rebut this defense and to amplify the merit of the underlying claim, Rideau proffered statistical evidence, distilled from *still available jury records*, that demonstrated beyond any doubt both that the Warden was not prejudiced by the passage of time and the resounding merit of the claim. This evidence, whose accuracy the Warden accepts, identified the racial composition of the 11 grand jury panels that preceded Rideau's going back to October 13, 1954. These data, after including the one that indicted Mr. Rideau, demonstrated that only six of the total 144 jurors were African American, that six of the twelve panels were all-white, and that no

more than one African American ever sat on the same jury. *See Proffer of Evidence,* filed August 9, 1996 (herein "proffer").

In a comprehensive report, Magistrate Judge Noland carefully reviewed the record evidence and governing case law, and reached the following conclusions:

> When [the relevant] standards are applied to the present case, there can be little doubt that Rideau was indicted by an unconstitutionally selected grand jury.
>
> The statistical evidence of underrepresentation is overwhelming and unrebutted. According to the 1960 U.S. Census, Calcasieu Parish had 7,237 black men over the age of 21, and 31,729 white men in the same category. Thus, about 18.5 percent of the parish's population was black and eligible for grand jury service in 1960 and 1961. According to the 1950 U.S. Census, Calcasieu parish had 26,172 men over the age of 21. Of that number 5,626 were black - about 21.5 percent of the eligible population. (footnote omitted)
>
> According to undisputed evidence of the 12 grand juries that were selected between October 3, 1954 and January 16, 1961, no grand jury had more than one black member (out of 12 on each panel). Of 144 grand jurors that were selected during this period, only six were black – about four percent.[6]
>
> Against this background of overwhelming under-representation of black citizens on grand juries, there is the system of selection itself. Hillebrandt, the longtime clerk of court, testified that jury commissioners knew the race of each candidate and that they would make subjective determinations about each person's qualifications to sit on the grand jury. Hillebrandt also testified that he tried to put one black person on each grand jury, apparently not realizing that this would still leave blacks in Calcasieu Parish substantially underrepresented. It is difficult, if not impossible, to interpret this statement, when read in context with the other facts, as anything other than an admission that jury commissioners were trying to get away with putting as few blacks on grand juries as they thought they could. While Hillebrandt testified that some

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[6] The Magistrate Judge stated that "this Court would . . . find that Rideau made a prima facie case of racial discrimination before the Louisiana courts" even in the absence of this historical evidence. Rec.#30849, p. 190.

> grand juries had more than one black member, the unrebutted statistical evidence does not support this vague contention.
> With the combination of the statistical evidence and the evidence of a race-conscious, subjective selection procedure, the State cannot seriously contend that Rideau did not make out a prima facie case of racial discrimination.

Rec.#30849, pp. 191-198.

It was upon this record that the court below unanimously concluded that the record unmistakably demonstrates a meritorious Equal Protection claim. *See Rideau v. Whitley*, 237 F.3d 472, 486-89 (5th Cir. 2000).

Warden Cain argues that this Court's intervention is appropriate because the court below applies different standards to grand jury discrimination claims. *See* Cert. Pet. at 16-18. The Warden is mistaken as that Court applied the correct standard of review in this case and in the case Warden Cain cites, *James v. Whitley*, 39 F.3d 607 (5th Cir. 1994). Even if the Court were to conclude that Warden Cain is correct, review is not called for here because under any review standard, the record in this case proves purposeful discrimination.

The Warden seems to argue that the determination of whether the record facts show purposeful discrimination is a question of fact, and not a mixed question. With regard to this particular type of claim, the Court has often treated the issue as a mixed question. *See e.g., Whitus v. Georgia*, 385 U.S. 545, 550 (1967); *Avery v. Georgia*, 345 U.S. 559 (1953). But even if this determination is a question of fact, no deference is owed the state court determination because the state courts applied an erroneous legal standard. *See, e.g., Gray v. Mississippi*, 481 U.S. 648, 661 n.10 (1987) ("Such deference [to state court factfinding]

is inappropriate where, as here, the trial court's findings are dependent on an apparent misapplication of federal law"); *Rogers v. Richmond*, 365 U.S. 534, 546 (1961) ("[I]t would be manifestly unfair . . . were we to sustain a state conviction in which the [factfinder] . . . passes upon that claim under an erroneous standard of constitutional law.")

In upholding Mr. Rideau's murder conviction on two separate occasions, see *Rideau* II, and *Rideau* III, the Louisiana Supreme Court twice applied an egregiously incorrect standard of law to its adjudications of Rideau's claim. First, the court held that Rideau had failed to prove intentional discrimination because the jury commission had selected the grand jury venire "before the commission of the crime charged" and therefore "no action of the jury officials could have been designed to prejudice the defendant." *Rideau* II at 268; *Rideau* III at 104 (quoting earlier decision). This Court has never required defendants to demonstrate that they were the specific targets of unconstitutional discrimination in the formation of jury bodies. In *Rideau* III, the court also erred when it held that Rideau had failed to "bear his burden of proof" because he did not show "prejudice" resulting from the alleged discrimination. *Rideau* III at 104. However, as Justice Barham admonished in dissent, "the majority applied incorrect standards" because "[i]t is axiomatic that a defendant need not show that he has suffered prejudice from the venire selection . . . " *Id.* at 107 (Barham, J., dissenting) (citing *Alexander v. Louisiana*, 405 U.S. 625 (1972), and *Whitus v. Georgia*, 385 U.S. 545 (1967)). This Court has consistently refused to require a showing of prejudice because "[i]t is in the nature of the practices here challenged that proof of actual harm, or

lack of harm, is virtually impossible to adduce. For there is no way to determine what jury would have been selected under a constitutionally valid selection system, or how that jury would have decided the case." *Peters v. Kiff*, 407 U.S. 493, 504 (1972).

Thus, because the state court applied the wrong legal standard, its findings are not entitled to a presumption of correctness under former 2254(d). The court below thus properly reviewed the issue as a mixed question.

b. **The Record Establishes The State Suffered No Prejudice From The Fact That Mr. Rideau Did Not Commence This Proceeding Until 1994**

This case would be a particularly poor one in which to reassess *Vasquez* because, as the court below meticulously concluded, the Warden was unable to identify *any* prejudice in its ability to defend against the merits of the claim. This view is fundamentally correct.[7]

In enacting Rule 9(a) of the Rules Governing Cases in the United States District Courts Under Section 2254 of Title 28, Congress established that delayed petitions should

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[7] Warden Cain makes a number of assertions with regard to this question which are inaccurate. He asserts that Mr. Rideau should be held responsible for a 33 or 40 year delay in presenting this claim to the federal courts. This is wild exaggeration. Mr. Rideau timely presented this claim in the state courts prior to his second and third trials. The claim was repeatedly rejected. After the state supreme court denied the claim for the second time in 1973, Mr. Rideau was advised by his counsel that the claim would not be found meritorious in federal court. Mr. Rideau reasonably accepted this view until he became aware of case law in 1994 that suggested his claim indeed had merit. He thereafter promptly filed the instant proceeding. Warden Cain asserts that this Court reviewed the merits of this claim when it *denied* certiorari in 1967. Of course, with the denial of certiorari, the Court did not review the merits of the claim. Warden Cain also asserts that Mr. Rideau's delay in filing the petition establishes he abused the writ. The Warden did not assert below that this petition should have been dismissed on Rule 9(b) grounds and should not be heard to advance that argument for the first time in this proceeding.

be dismissed on untimeliness grounds only if the Warden makes a particularized showing of prejudice – that the passage of time during the period of the delay robbed the Warden of the ability to fairly contest the merits of the case. *See e.g., Walters v. Scott*, 21 F.3d 683 (5th Cir. 1994); *Strahan v. Blackburn*, 750 F.2d 438 (5th Cir. 1985).

In this case, the facts supporting the claim were established in the state courts prior to the second and third trial when the State had access to witnesses – the jury commissioners, court clerks and others – and documentary evidence – the jury cards. At the conclusion of each hearing, the State chose not to present any rebuttal evidence. When Mr. Rideau filed his federal petition in 1994, he relied upon this record to establish the merit of his claim.

After the Warden pleaded generally that many of its witnesses were now deceased and significant records were no longer available, Mr. Rideau conducted his own search for records, and determined that many jury records extending back to the late 1940's existed *and* that these records confirmed that the grand juries in Calcasieu Parish had been either all-white, or contained only one African American juror. Before the district court, the Warden could not articulate how any of the deceased witnesses – the trial judges, members of the Louisiana Supreme Court, former juror commissioners – would have offered testimony to change the description of the system as it had been established at the two trial court hearings.

The court below gave exhaustive attention to this matter and could not identify any way in which the State's legitimate interest in being able to rebut the claim was prejudiced

by the delay in filing. This decision is correct; the Warden has not made any attempt to establish that it is erroneous.

c. The State Cannot Establish Harm If This Court Allows the Grant of Habeas Corpus Relief to Stand

If the Court allows the decision below to stand, the State will have three choices: it may attempt to reprosecute, it may settle the case, or it may conclude not to reprosecute since Mr. Rideau has already served more than 40 years in prison and has been a model prisoner in every sense of the word. Under none of those scenarios can the State legitimately establish harm.

The Court should not read the petition for certiorari as asserting that the passage of time will prevent the State from reprosecuting Mr. Rideau. In recent statements made to local news media, the District Attorney has asserted that he is prepared to reprosecute and has as much or more incriminating evidence as his predecessor possessed in the first three trials. *See* Bobby L. Celestine, *Calcasieu Parish D.A. Ready to Retry Rideau,* **Gumbeaux Magazine**, Vol. 9, Number 7, April 12-25, 2001, p.6. Thus, the concern that the passage of time will require Mr. Rideau's release does not apply here. *See generally Engle v. Issac* 456 U.S. 107, 127-28 (1982).

Moreover, the Warden states that another societal cost imposed by retrial is that the victims may be asked to relive the disturbing events of the crime. *See Morris v. Slappy*, 466 U.S. 1, 14 (1983). Mr. Rideau had no control whatsoever over this error being present in this

case. Indeed, he made repeated efforts – throughout the proceedings in the second trial: pretrial motion and hearing, and appeals to the state and federal courts – to bring this error to the prosecution's attention. The prosecution elected to ignore these warnings and prosecuted Mr. Rideau at his third trial pursuant to the original indictment. This type of error is "possible only under color of state authority, and [is] wholly within the power of the State to prevent." *Vasquez*, at 262.

Another harm the Court has identified is that delay in the resolution of a defendant's responsibility for crime will impede the objectives of deterrence and rehabilitation. *See United States v. Mechanik*, 475 U.S. 66 (1986). The Warden cannot show that harm in this case. Mr. Rideau has already served one of the longest prison sentences in Louisiana history. More than 700 other convicted murderers serving life or death sentences have been released as Mr. Rideau has remained in prison, not one of whom had served as much as 40 years or had demonstrated the kind of rehabilitations Mr. Rideau has. While he came to prison as a ninth grade drop-out, he has educated himself to become a highly celebrated award-winning journalist and a respected authority on prisons and criminal justice. He has been credited with pioneering a free press behind bars, to the benefit of the institution and the education of society, with the magazine he has edited since 1976, the *Angolite*. He has created works in print, radio, television, and film that have won major national awards. He has co-edited two textbooks that are used in universities in Louisiana and nationwide. In 1984, he shared the dais at Tulane University with the Chief Justice of the Louisiana Supreme Court, and he

shared the stage, by satellite, with former Chief Justice Burger on *Nightline.* For 20 years, the Department of Corrections allowed Mr. Rideau to leave the prison on hundreds of occasions to work with judges and their juvenile probationers to deter them from a life of crime. He has gone to churches, schools, Boy Scout troops and before many civic organizations to talk about his prison experiences, in the hope of deterring youngsters from crime, for which he has twice been given a Certificate of Outstanding Merit to the City of New Orleans by the mayor. He has lectured at nearly every university in the state of Louisiana on the subjects of prison, criminal justice, and journalism. He has been allowed to attend, as an invited speaker, criminal justice conferences in Louisiana and national journalism conferences in Washington D.C. In all his travels, within the state and without, he has been deemed so trustworthy that he has been accompanied only by one *unarmed* guard. Throughout the four decades of his imprisonment, he has had only one minor infraction on his record; he once violated prison policy when he inadvertently carried Whiteout from his office to his dormitory. After thorough research, and following the lead of many Louisiana state officials—including every warden of Angola who has known Mr. Rideau and numerous pardon board members who have repeatedly recommended that he be released—Life Magazine in 1993 dubbed him "the most rehabilitated prisoner in America."

No deterrent effect would be achieved by failing to remedy the racial discrimination lying at the root of this case. To say that Mr. Rideau is a model of rehabilitation, for which the State of Louisiana should wisely take credit, is an understatement. The interests of

justice will be well served and the important objectives of deterrence and rehabilitation will not suffer a whit if the Court leaves in place the grant of relief

CONCLUSION

WHEREFORE, for all of these reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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No. 00-1577

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2000

BURL CAIN, Warden
Angola State Prison,

Petitioner,

-vs-

WILBERT RIDEAU,
Respondent.

CERTIFICATE OF SERVICE

I hereby certify that three copies of Respondent's Brief in Opposition and Motion for Leave to Proceed *In Forma Pauperis* have been served upon counsel for Petitioner, by first class mail, this 14TH day of May, 2001, at the following address:

Rick Bryant
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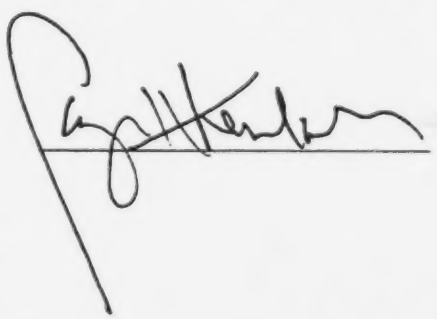

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